

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
UNIFIED SCHOOL DISTRICT #298)	File No. 0006020786
)	
For Renewal of License for Educational)	
Broadband Service Station WLX869)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: February 11, 2014**Released: February 12, 2014**

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we grant Unified School District #298 (“USD #298”) a waiver of the Commission’s rule requiring that a licensee file its renewal application before its license expires. While USD #298 had filed a timely application to renew Station WLX869, the application had been dismissed because USD #298 failed to respond to a notice of return. While the original dismissal was correct, we find that it is in the public interest to grant a waiver to allow processing of a second, late-filed application to renew Station WLX869 and thus allow USD #298 to continue providing educational broadband services.

II. BACKGROUND

2. USD #298 operates Educational Broadband Service (“EBS”) Station WLX869 on the D-group channels in Lincoln County, Kansas. The license is currently being used as part of a wireless network operating at USD #298’s facilities providing coverage of Licensee’s school campus, its administration facility as well as adjacent athletic and recreational facilities.¹

3. On April 15, 2013, USD #298 timely filed an application to renew Station WLX869, which was scheduled to expire on May 13, 2013.² Under the Commission rules, licensees may file a renewal application 90 days before the license expires.³

4. On January 16, 2013,⁴ the Wireless Telecommunications Bureau (“Bureau”) returned USD #298’s First Renewal Application because USD #298 was required to disclose the owners of Station WLX869 by filing FCC Form 602 and did not do so.⁵ USD #298 timely responded to the First Notice of Return on amending the First Renewal Application to report the filing of Form 602.⁶ Unfortunately, the

¹ File No. 0004921619, Demonstration of Substantial Service (filed Oct. 20, 2011) at 1.

² File No. 0005414854 (filed Sep. 25, 2012) (“First Renewal Application”).

³ 47 C.F.R. § 1.949(a).

⁴ Notice of Return, Ref. No. 5616019 (June 27, 2013) (“First Notice of Return”).

⁵ See 47 C.F.R. § 1.913(a)(2).

⁶ First Renewal Application, Form 602 Addition (filed Aug. 9, 2013).

Form 602 USD #298 filed was in the name of Lincoln Unified School District #298, which did not match the name of the licensee.⁷ The Bureau therefore returned the First Renewal Application again on August 14, 2013 with the following explanation:

The Commission cannot proceed with the processing of your renewal application until these name discrepancies between the Form 602, license, and the registration are resolved. PLEASE NOTE the legal licensee name for call sign WLX869 and the name listed on FCC Form 602 must be the same. Therefore, your 602 form should be filed in the name of Unified School District #298 or application file number 0005737632 should be amended to change the licensee name to Lincoln Unified School District #298. Commission records indicate FRN 0002332633 is registered in the name of Lincoln Unified School Dist #298. Please note that the registration for FRN 0002332633 may need to be updated also.⁸

5. The Second Notice of Return indicated that USD #298 must amend the First Renewal Application within 60 days (on or before October 15, 2013) or its First Renewal Application would be dismissed.⁹ On November 9, 2013, the Bureau dismissed USD #298's First Renewal Application because USD #298 did not respond to the Second Notice of Return.¹⁰

6. USD #298 filed a second renewal application on November 19, 2013.¹¹ In that application, it requested that Section 1.949(a) of the Commission's Rules be waived to allow acceptance of USD #298's late-filed application.¹² USD #298 admits that it should have resubmitted the Form 602 in the name of Unified School District #298.¹³ It claims that it did not realize that further action was required until it received the Notice of Dismissal.¹⁴ It regrets its oversight.¹⁵

7. USD #298 has arranged to have Kansas Broadband Internet help it ensure that future renewal applications are filed in a timely manner.¹⁶ All notifications from the Commission, including renewal reminder notices and notices of return, will be forwarded to a designated contact within Kansas Broadband Internet in order to create a dual contact system.¹⁷ Kansas Broadband Internet has created an application that will track renewal dates for the school districts that it supports.¹⁸

⁷ See Form 602, File No. 0005890457 (filed Aug. 9, 2013).

⁸ Notice of Return, Ref. No. 5637407 (Aug. 14, 2013) ("Second Notice of Return").

⁹ *Id.*

¹⁰ Notice of Dismissal, Ref. No. 5683060 (Nov. 13, 2013). The Bureau gave public notice of the dismissal of the First Renewal Application on November 13, 2013. See Wireless Telecommunications Bureau Market-Based Applications Action, Report No. 9128, *Public Notice* (Nov. 13, 2013) at 1.

¹¹ File No. 0006020786 (filed Nov. 19, 2013) ("Second Renewal Application").

¹² *Id.*, Letter from Scott Rosebrook to Federal Communications Commission ("Waiver Request").

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Additional Exhibit for Waiver Request (filed Jan. 22, 2014).

¹⁷ *Id.*

¹⁸ *Id.*

III. DISCUSSION

8. Although USD #298 timely filed its First Renewal Application, we conclude that the dismissal of USD #298's First Renewal Application was proper. Under Section 1.934(c) of the Commission's Rules, we properly dismissed USD #298's First Renewal Application because USD #298 failed to respond to our Second Notice of Return on or before October 15, 2013, the date indicated in the Second Notice of Return.¹⁹ Generally, the Bureau sends a Notice of Return to applicants when additional information is necessary for the Bureau to process the application. Moreover, Notices of Return plainly state that "[i]f you do not file an amendment to your application within 60 days of the date on the top of this letter, your application will be dismissed."²⁰ In this case, USD #298 did not do so and thus its First Renewal Application was properly dismissed.

9. The pertinent question before us, however, is whether to grant USD #298's request to waive Section 1.949(a) of the Commission's rules to allow consideration of its subsequent Second Renewal Application. The Commission may grant a waiver request if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²¹ While there is precedent for refusing to reinstate renewal applications when an applicant fails to offer a justification for failing to respond to a return letter,²² based upon the totality of the circumstances of this case, we find that USD #298 has shown that in view of its unique factual circumstances, it is in the public interest to grant its Waiver Request and allow processing of its Second Renewal Application.²³ Although USD #298 did not timely respond to the Second Notice of Return, it has otherwise been diligent in complying with the Commission's rules. It timely filed its First Renewal Application, responded to the First Notice of Return and demonstrated substantial service. We also recognize that USD #298 filed its Second Renewal Application within days after receiving the Notice of Dismissal. We also note that USD #298 has worked with Kansas Broadband Internet to implement a system to make sure all Commission correspondence is answered in the future. Under these specific circumstances, while we expect USD #298 to exercise greater care in the future, we find that it is not in the public interest for USD #298 to lose its license for this isolated failure.

10. Another circumstance supporting a grant of a waiver for USD #298's Renewal Application is that it is providing educational broadband service to students and faculty. Station WLX869 provides the only available internet access to a vocational facility that is used daily by its high school students. Based upon the totality of the circumstances, we conclude that it is in the public interest to grant USD #362's Waiver Request.

¹⁹ 47 C.F.R. § 1.934(c). Under Section 1.934(c) of the Commission's Rules, an application may be dismissed when the applicant fails "to respond substantially within a specified time period to official correspondence or requests for additional information."

²⁰ See Second Notice of Return.

²¹ 47 C.F.R. § 1.925(b).

²² See RAM Technologies, Inc., *Order on Reconsideration*, 16 FCC Rcd 10919 (WTB PS&PWD 2001).

²³ See Somerville Independent School District, *Order on Reconsideration*, 27 FCC Rcd 6063 (WTB BD 2012) (renewal application reinstated despite failure to respond to notice of return where two notices of return had been sent around the same time and licensee had otherwise been diligent in complying with the Commission's rules).

11. USD #298 is the fifth EBS licensee who has recently sought relief after having renewal applications dismissed for failing to respond to a notice of return.²⁴ We remind EBS licensees of the importance of responding to notices of return and all Commission correspondence in a timely fashion. We are concerned about this pattern, and we reserve the right to conclude in future cases that the Commission's interest in ensuring timely responses to Commission correspondence would justify denying relief to EBS licensees who fail to respond to Commission correspondence.

IV. CONCLUSION AND ORDERING CLAUSES

12. The decision to dismiss USD #298's First Renewal Application was correct. However, based upon the information provided in the Waiver Request, we have decided to grant a waiver to allow processing of USD #298's Second Renewal Application. Accordingly, we grant USD #298's Waiver Request.

13. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.925 and 1.949 of the Commission's Rules, 47 C.F.R. §§ 1.925, 1.949, the Waiver Request filed by Unified School District #298 on November 19, 2013 IS GRANTED.

14. IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309, and Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, that the Broadband Division SHALL PROCESS the application filed by Unified School District #298 for renewal of license of Educational Broadband Service Station WLX869 (File No. 0006020786) in accordance with this *Memorandum Opinion and Order* and the Commission's rules and policies.

15. These actions are taken under designated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
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²⁴ See Unified School District #392, *Memorandum Opinion and Order*, 28 FCC Rcd 6373 (WTB BD 2013); Burlington College, *Memorandum Opinion and Order*, 27 FCC Rcd 15267 (WTB BD 2012); Garnett Unified School District #365, *Memorandum Opinion and Order*, 27 FCC Rcd 13086 (WTB BD 2012); Somerville Independent School District, *supra*.